

collection process."¹³⁵ The panel suggested that an 80 per cent to 90 per cent landing requirement for each fishery or related fisheries could be acceptable as a conservation measure.

While both countries claimed victory, portions of the fishing industry on both sides saw defeat: if the landing requirements were altered to reflect the full findings of the panel, Canadian shore workers would not have exclusive right to fish caught in Canada, nor would U.S. processors have unrestricted access to Canadian fish.

However, at the same time that the Canadian government was indicating that it was prepared to lower its landing requirements to 90 per cent, U.S.T.R. Carla Hills indicated that complete removal was required, since the panel had found the landing requirement inconsistent with GATT and FTA obligations.

At the November meeting of the Commission, both Hills and Crosbie softened their positions somewhat: Hills no longer demanded complete withdrawal and Crosbie indicated he would consider a somewhat lower landing requirement.

No final agreement has yet been reached on the adoption of either the panel report or an alternative solution. Chapter 18 panel decisions are binding only if both sides agree in advance. In this case, neither side to the dispute requested that the panel's findings be binding, and therefore are not obligated to adopt its report or to act on its recommendations. Since both sides had made a general commitment to follow the new FTA procedures, and this is the first dispute panel under the new rules, it was hoped that the panel findings would be implemented.

If Canada fails to implement changes that are acceptable to the United States, the U.S.T.R. can resume its action, under Section 301 of the Trade Act, against Canada and take any retaliatory steps it deems necessary. Since the panel has found that a 100 per cent fish landing requirement is inconsistent with Canada's obligations, to avoid retaliation from the United States some portion of B.C. fish will have to be offered directly on the world market. While this may increase the income of the owners of the fishing licenses, given a fixed quota of fish to be landed, shore-based processors, who face higher labour costs than do their United States counterparts, may find themselves outbid for Canadian fish. Either wages will have to be lowered in Canadian plants or jobs will leave the country. While this may be more economically efficient in the aggregate, it does present problems for an established industry in a remote region, as well as for a government which said that it would protect all these jobs and has committed itself to adjustment assistance for all those whose livelihoods are damaged by the FTA.

As well as testing the speed and fairness of the new dispute settlement mechanisms and the willingness of the governments to implement or accept adverse decisions, the fish dispute raises several other important questions.

¹³⁵ *Ibid.*, p. 54 and p. 53.